



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

TOM REILLY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

November 8, 2006

By Certified Mail 7003 3110 0001 6223 7590
Return Receipt Requested

RICHARD A. NYLEN, JR.
LYNCH, DESIMONE & NYLEN, LLP
Attorneys at Law
12 Post Office Square
Boston, Massachusetts 02109

re: *Commonwealth of Massachusetts v. New Ventures Associates, LLC*,
Suffolk Superior Court C.A. No. 06-0790 C

Dear Chip:

The purpose of this letter is to notify you that, as of the date of this letter, New Ventures Associates, LLC ("New Ventures") is not in compliance with the Preliminary Injunction entered by the Court on October 20, 2006 in the above captioned action ("Order").

Paragraph 1 (j) of Order requires that New Ventures shall:

within ten (10) days of this Order, completely cover with impervious tarps in accordance with the performance standards and "tarp and poly sheet placement protocol," attached to this Order as "Appendix B," all areas of the Site containing construction and demolition waste fines and residual materials ("C&D Material") that are not currently tarped, with the exception of areas that in the past twenty four (24) hours have undergone filling, grading, shaping, or Geocomposite gas collection system installation activity, which areas shall be completely covered at all times when no work on that area is in progress, using removable, impervious tarps or poly sheeting at least 11 millimeters thick. New Ventures shall examine the areas currently tarped and repair or replace tarps or portions of tarps that are damaged or which do not provide an impervious barrier.

By letter dated October 31, 2006, New Ventures informed the Massachusetts Department of Environmental Protection (the "Department") that tarps placed to meet the requirements of paragraph 1 (j) of the Order had been damaged or disturbed as a result of extraordinarily high winds (50 - 60 mph gusts) the weekend of October 28 and 29, 2006. New Ventures requested and the Department granted a Force Majeure extension of the tarp placement compliance deadline in paragraph 1 (j). Although New Ventures requested a ten (10) business day extension, the Department granted a five (5) day extension, thereby requiring that all tarp placement work required by paragraph 1 (j) be completed by the end of the day on November 6, 2006. *See* the Department's Force Majeure approval letter attached as "Exhibit 1."

Based on an inspection of the landfill by Department staff and the Office of the Attorney General on November 7, 2006, tarps had not yet been either placed or repaired as required by paragraph 1 (j) of the Order in the areas shaded on "Exhibit 2," attached. New Ventures must comply immediately with the tarp placement requirements of the Order. The Department and the Office of the Attorney General hereby expressly reserve all rights and remedies to enforce the tarp placement requirements in paragraph 1 (j) of the Order.

Paragraph 1 (b) of the Order requires that New Ventures "continue to operate at all times the open flare in-place and in-use as of the date of this Order" pending installation and operation of the new, enclosed flare required by paragraph 1 (b) of the Order. The open flare currently in-place at the landfill periodically went out on several occasions between late Friday afternoon, November 3, 2006 and Monday morning, November 6, 2006. Moreover, the safety switch that shuts off the blower when the flare is not ignited appears to have malfunctioned or quit working during one or more intervals, resulting in the emission of landfill gas ("LFG") not subject to combustion by the flare. As you know, elevated hydrogen sulfide readings were recorded at the landfill and at the Charmanski Drive station on several occasions on Saturday November 4, 2006 and Sunday November 5, 2006. These levels created Department verified nuisance conditions and threatened the health and safety of residents living in the neighborhoods around the landfill, including, without limitation the neighborhoods along Charmanski Drive and Low Street. Odor complaints were reported as far from the landfill as Middle School on Low Street.

Paragraph 9 of the Order provides that:

any LFG emissions that create or result in Department verified nuisance odors will not be cause or provide a basis for ceasing acceptance and placement of C & D Fines and Materials pursuant to the requirements of this paragraph 9 so long as New Ventures promptly corrects all violations of 310 CMR 19.043, 310 CMR 19.117, 310 CMR 19.130, 310 CMR 7.01 and 310 CMR 7.09 and New Ventures returns to full compliance with the air quality and nuisance requirements of 310 CMR 19.000 *et seq.*

and 310 CMR 7.00 *et seq.* within 72 hours of written notice of any violation by the Department.

By mid-morning Tuesday, November 7, 2006, the open flare appeared to be operating without problem or incident. The Department's inspection and investigation into New Ventures' response to the multiple incidents of flare malfunctions that occurred between Friday evening and Monday morning, November 3 through 6, 2006, demonstrate New Ventures' failure to comply fully with paragraph 1 (l) of the Order, which requires that:

within seven (7) days of entry of this Order, staff the landfill with no fewer than three trained employees and have at least one trained employee on-Site and on-duty at all times so that the landfill is staffed twenty four (24) hours a day, seven days a week with trained employees certified in accordance with the requirements of Appendix A as capable of performing the following activities, which shall be performed on a routine or as needed basis twenty four (24) hours a day, seven (7) days a week in accordance with the performance standards in Sections F, H, and I of Appendix A: monitoring and maintaining operation of the existing open flare or the enclosed flare and LFG pretreatment system, responding to odor complaints, taking routine Jerome meter readings of hydrogen sulfide levels around the landfill's perimeter, and the other duties and monitoring responsibilities set forth in Sections F, H and I of Appendix A.

Although New Ventures staff was present at the landfill round-the-clock between Friday evening and Tuesday morning, November 3 through November 7, 2006, the flare was not promptly relit each time it went out. Moreover, staff appeared to treat the flare malfunction and high spikes in LFG emissions as a routine maintenance issue instead of a public health threat and serious violation of the Order. Although landfill staff called the manufacturer of the open flare on Saturday, they did not communicate the urgency of the problem or make any effort to get a flare technician to the landfill before Monday morning to stop emission of non-combusted LFG. This is unacceptable and a violation of the Order, which requires that New Ventures return to compliance within 72 hours of verified nuisance odors caused by, *inter alia*, a malfunction of the open flare. Subsequent to the malfunction, the Department confirmed that the manufacturer of the flare can and does make service calls on Saturdays and Sundays in response to equipment failures or problems. The Department and the Office of the Attorney General hereby expressly reserve all rights and remedies to enforce the requirements of the Order, including violations of paragraphs 1 (b) and 9, resulting from any operational or equipment problems associated with the open flare.

Finally, New Ventures failed to fully comply with the odor complaint monitoring, recording and reporting requirements of the Order, including the requirements in Sections H and I to Appendix A of the Order. Among the compliance problems verified by the Department the week of November 1 through 7, 2006 are the following: malfunctions or periods of non-operation of the

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telephone complaint system required by Section H of Appendix A; and incorrect, inaccurate and misleading dates supplied on several daily Collection System Monitoring Forms submitted to the Department as required by Section I of Appendix A.

Sincerely,

/s/ Matthew Ireland
Assistant Attorney General
Environmental Protection Division

cc: email to: Richard A. Nylen <rnylen@ldnllp.co>
Richard Chalpin, DEP (by regular fist class mail)
Mike Dingle, DEP (by regular fist class mai